

GENERAL COUNSEL'S OPINION NUMBER 55-31, DATED 15 NOVEMBER 1955

Medical benefits under the Federal Employees' Compensation Act and those under the CIA Act are complementary and Agency regulations may authorize the payment of CIA Act medical benefits for cases compensable under FECA.

TO THE DIRECTOR OF PERSONNEL

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1. The proposed issuance of Regulation [REDACTED] Employees' Compensation Benefits, [REDACTED] requires resolution of the question of whether or not the benefits provided under FECA and under P. L. 110, 81st Congress, for injury and death of employees are mutually exclusive, complementary or alternative. Agency practice has been to allow an employee to elect which benefits he will receive when he incurs an injury in the line of duty which would also be considered to have been incurred in the performance of duty in the sense of FECA. There is some question as to whether or not this procedure has been correct in view of the supposed exclusive remedy provided by FECA. The question has been discussed with representatives of the Bureau of Employees' Compensation and of the Office of the Solicitor, Department of Labor. They recognize the issues involved but consider it a problem for Agency determination.

2. Section 7(b) of FECA, which was added by amendment in 1949, states, in effect, that the liability of the United States under this Act shall be exclusive. However, section 7(a), which previous to the amendment in 1949 had been section 7 in its entirety, provides, in effect, that whenever any person is entitled to receive benefits under FECA and is also entitled to receive any payments or benefits under any other Act of Congress, such person shall elect which benefits he shall receive. On the surface sections 7(a) and 7(b) would appear to be incompatible.

3. The wording of section 7(a), providing an election between benefits, is such as to indicate that the election is allowed only when another benefit is one which has been earned by reason of service. It is designed in particular to preserve pension rights under various retirement systems which make provision for disability retirement. In many situations the employee has earned certain pension rights through service and has also contributed financially to the pension fund and therefore should not lose the rights thus accrued. For example, this election provision allows an individual under the Civil Service Retirement system, who has become totally disabled, to elect the benefits of his retirement system for which he has worked and paid, in the event that those benefits are greater than those under FECA. The election of a

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Page 2 - GC Opinion No. 55-31

benefit of this nature does not dilute the basic purpose of the exclusive remedy provision of section 7(b), which is to cut down the number of law suits against the Government while at the same time providing adequate pensions for those disabled in the performance of duty. Therefore, the exclusive remedy provision of section 7(b) and the election provision of section 7(a) are not incompatible. It appears, however, that the exception provided for earned pension rights and that provided in section 7(b) for masters or members of the crew of any vessel are meant to be the only exceptions to the exclusive remedy provision.

4. Since section 7(a) of FECA provides an election of benefits only under certain specified circumstances, and section 7(b) of the Act provides that the liability of the United States under FECA shall be exclusive, there would appear to be some question as to whether or not an employee of the United States might receive benefits of any kind other than those provided in FECA for injuries, disability or death resulting from performance of duty. There is some argument that the language of 7(b) combined with that of 7(a), makes it plain that no other benefit of any kind is permitted either in addition to or in place of the FECA benefits. Certainly there is no doubt that no other benefit in the nature of unearned pensions or lump-sum payments for certain types of injuries may be allowed. However, there is more doubt as to whether or not the exclusive remedy provision prohibits payment of medical expenses under another Act. The question of particular interest is, of course, whether or not an employee of CIA who is injured in the performance of duty, but under circumstances which comply with the line of duty requirements of section 5(a)(5)(A) and 5(a)(5)(C) of P. L. 110, may receive the benefits provided in the latter Act. These benefits are only the payment of medical expenses and necessary transportation and are not any greater than those provided under section 9(a) of FECA.

5. In resolving the question of whether an employee who meets performance-of-duty standards may have his necessary hospital expenses and transportation paid it is necessary to take into consideration the wording of section 7(b) of FECA. In substance it is as follows:

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"The liability of the United States . . . under this Act . . . shall be exclusive, and in place of all other liability . . . to the employee . . . and anyone otherwise entitled to recover damages from the United States . . . on account of such injury or death, in any direct judicial proceedings in a civil action or in admiralty, or by proceedings, whether administrative or judicial, under any other workmen's compensation law or under any Federal tort liability statute: . . ." (Emphasis Supplied)

Page 3 - GC Opinion No. 55-31

It would seem clear from the wording of section 7(b) that the intent was to limit to action under FECA recovery in the nature of damages for injuries incurred in the performance of duty. Although by definition in section 40(h) of FECA the term "compensation" as used in the Act refers to all benefits paid out of the compensation fund, thus including payment for medical expenses, it would seem from the way that the word "compensation" is used elsewhere in the Act that recovery in the nature of damages or pension rights was actually contemplated rather than mere reimbursement for medical expenses. [redacted]

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7. In view of the fact that the exclusive remedy provision of section 7(b) of FECA is designed to prevent unnecessary law suits against the United States [redacted]

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8. [redacted]

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[redacted] it is recognized that he may forfeit his rights to FECA benefits by failing to comply with the filing requirements of that Act within the time limits set up therein.

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Page 4 - GC Opinion No. 55-31

In many cases employees do not wish to be bothered with the "red tape" of filing an FECA claim when they are convinced that their injury is of a minor nature and will cause no future disability. In some cases the employee will be wrong and the injury will prove to be of more lasting effect than he had first thought it to be. In such cases, the employee could lose substantial benefits and be put to great expense in the future. However, it is believed that this problem is moot inasmuch as the requirements of proposed Regulation [redacted] are such that the employee is, in effect, filing an FECA claim whether or not he immediately receives FECA benefits. Because of the procedures worked out with the Bureau of Employees' Compensation, a claim, when filed within the Agency, is as valid as if it had been submitted to the Bureau of Employees' Compensation and, therefore, the time limit for filing will not be a problem.

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